

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

American Electric Power Service Corporation

Docket No. ER02-2007-001

ORDER GRANTING REHEARING

(Issued March 25, 2004)

1. In this order, we will grant American Electric Power Service Corporation's (AEP) rehearing request of the Commission's July 18, 2002 Letter Order (Basket Order). This order benefits customers by explaining the Commission's prior notice and filing requirements.

Background

2. On June 3, 2002, AEP filed, under its Open Access Transmission Tariff (OATT), forty-one unexecuted Transmission Service Agreements (TSAs) between AEP and various municipal and cooperative utilities which are wholesale customers of the Lower Colorado River Authority (LCRA),¹ for service within the Electric Reliability Council of Texas (ERCOT). AEP requested waiver of the Commission's prior notice requirements and an effective date of January 1, 2002.

3. The Basket Order accepted the TSAs for filing and denied waiver of the prior notice requirement, noting that waiver is only granted if a tariff service agreement is not filed within 30 days after service commences upon a showing of extraordinary circumstances.

4. On rehearing, AEP argues that there are, in fact, extraordinary circumstances present here. In support, AEP explains that transmission service in ERCOT is provided and charged for on a region-wide basis. AEP explains that each load serving entity using the ERCOT transmission system is charged a load ratio share of the costs of the entire system, and each transmission provider receives payments based on its share of the

¹ Although AEP filed TSAs for two additional customers as well, AEP is not seeking rehearing with regard to those two TSAs.

system's costs. AEP adds that, because most of the transmission providers are also load serving entities, a given participant may receive more in transmission revenues than it pays in transmission charges, or vice-versa. AEP states that all of the payment and costs relationships among the various transmission customers and providers are set forth in a Transmission Cost of Service (TCOS) payment matrix published each year by the Public Utility Commission of Texas (Texas Commission).

5. AEP also explains that it has a TSA with LCRA which had been filed with and accepted by the Commission in Docket No. ER97-1478-000. AEP states that, prior to 2002, LCRA was listed on the TCOS payment matrix as the transmission customer for the service it provides to its forty-one wholesale customers, that AEP had billed LCRA for such service, and that LCRA, in turn, recovered its transmission costs from each of its customers in the bundled rates it charged them for electric service.

6. AEP further states that the Texas Commission approved, on February 19, 2002, an interim TCOS payment matrix for the year 2002.² AEP states that, in the interim matrix, LCRA for the first time identified each of its forty-one wholesale customers separately as transmission customers, and that in April 2002, AEP began preparing separate bills for each of LCRA's forty-one wholesale customers.

7. AEP maintains that, as soon as it became aware of the billing change and because the bills were now being issued in the names of the forty-one wholesale customers, AEP believed it should have TSAs on file at the Commission for each load serving entity identified on the TCOS payment matrix, rather than continue to serve them under the TSA with LCRA accepted in Docket No. ER97-1478-000. Consequently, AEP prepared separate TSAs for each of the forty-one wholesale customers, and filed the TSAs in this proceeding. AEP explains that it asked for an effective date of January 1, 2002 – the date when the TCOS matrix was anticipated to become effective.

8. AEP argues that the Commission should reconsider its denial of waiver of the notice requirements for the following reasons: (1) no new service is being provided under the TSAs (the TSAs were merely filed to reflect a billing change); (2) the billing change was initiated unilaterally by LCRA when it identified its wholesale customers as separate transmission customers under the interim TCOS matrix; (3) LCRA still receives bills from AEP and pays AEP for the service; and (4) neither LCRA nor its wholesale customers asked AEP to enter into new TSAs with the wholesale customers.

² The final matrix was not approved by the Texas Commission until December 19, 2002, at which time it became effective as of January 1, 2002.

Discussion

9. We will grant AEP's request for rehearing. We find that AEP has demonstrated extraordinary circumstances justifying its request for waiver of the Commission's prior notice requirement.³ Here, the Texas Commission approves its matrix on a retroactive basis and the billing change was initiated unilaterally by LCRA. In addition, no new service is being provided under the TSAs.⁴ Accordingly, waiver of the prior notice requirement is appropriate.

The Commission orders:

AEP's request for rehearing is hereby granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

³ See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,984 (1993).

⁴ See Central Hudson, 60 FERC ¶ 61,106 at 61,338, reh'g denied, 61 FERC ¶ 61,089 (1992) (the Commission will generally grant waiver for contested filings that do not change rates).